



February 28, 2001

---

## HOUSE BILL No. 1543

---

DIGEST OF HB 1543 (Updated February 26, 2001 9:49 PM - DI 105)

**Citations Affected:** IC 15-4; noncode.

**Synopsis:** Agricultural marketing and bargaining act. Establishes the agricultural marketing and bargaining act. Creates the agricultural marketing and bargaining board within the office of the commissioner of agriculture. Provides for cooperative agricultural marketing and bargaining. Provides for the administration and enforcement of the agricultural marketing and bargaining act. Creates a review process for awards made by the agricultural marketing and bargaining board.

**Effective:** July 1, 2001.

---

---

### Lytle

---

---

January 11, 2001, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.  
February 27, 2001, amended, reported — Do Pass.

---

---

C  
o  
p  
y

HB 1543—LS 7807/DI 94+



February 28, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1543

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 15-4-13 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2001]:
- 4 **Chapter 13. Agricultural Marketing and Bargaining Act**
- 5 **Sec. 1. (a) This chapter does not apply to a sale of a commodity**
- 6 **by a producer to another producer for the producer's own**
- 7 **exclusive use.**
- 8 **(b) This chapter may be cited as the "agricultural marketing**
- 9 **and bargaining act".**
- 10 **Sec. 2. As used in this chapter, "accredited association" means**
- 11 **an association accredited under this chapter.**
- 12 **Sec. 3. As used in this chapter, "agricultural commodity" means**
- 13 **livestock or grain produced primarily for sale, consumption,**
- 14 **propagation, or other use by human beings or animals, as defined**
- 15 **by the board. The kinds, types, and subtypes of products to be**
- 16 **classed together as an agricultural commodity for purposes of this**
- 17 **chapter must be determined by the board on the basis of common**

HB 1543—LS 7807/DI 94+



C  
o  
p  
y

usage and practice.

Sec. 4. As used in this chapter, "association" means a cooperative association of producers, division of a cooperative associations of producers, or federation of cooperative associations of producers engaged in the:

- (1) marketing;
- (2) bargaining;
- (3) shipping; or
- (4) processing;

functions of an agricultural commodity on behalf of its members who are producers of the agricultural commodity.

Sec. 5. As used in this chapter, "bargaining" means the mutual obligation of a handler and an accredited association or their designated representatives to meet at reasonable times and confer and negotiate in good faith, but does not require either party to agree to a proposal or to make a concession.

Sec. 6. As used in this chapter, "board" means the agricultural marketing and bargaining board established by section 13 of this chapter.

Sec. 7. As used in this chapter, "committee" means the joint select committee established by section 37 of this chapter.

Sec. 8. As used in this chapter, "handler" means a person other than an association engaged in the business or practice of:

- (1) acquiring agricultural commodities from producers or associations for processing or sale;
- (2) grading, packaging, handling, storing, or processing agricultural commodities received from producers or associations;
- (3) contracting or negotiating contracts or other arrangements, written or oral, with producers or associations with respect to the production of any agricultural commodity; or
- (4) acting as an agent or broker for a handler in the performance of any function or act specified in subdivisions (1) through (3).

The term does not include a producer who sells at a retail establishment, which the producer owns and operates or who sells directly to consumers at a produce market, agricultural commodities produced by the producer and agricultural commodities produced by another producer subject to value limitation established by the board.

Sec. 9. As used in this chapter, "marketing period" for an



1 agricultural commodity is a period determined by the board  
 2 during which producers normally deliver for sale to handlers or  
 3 contract with handlers for the production and future delivery for  
 4 sale of substantially all of a crop or periodic production of the  
 5 agricultural commodity.

6 Sec. 10. As used in this chapter, "member" means a producer  
 7 who has entered into a contract with an association, appointing the  
 8 association as the producer's exclusive agent in negotiations with  
 9 handlers with respect to the marketing of an agricultural  
 10 commodity.

11 Sec. 11. As used in this chapter, "person" means a sole  
 12 proprietorship, a partnership, an association, a corporation, a  
 13 limited liability company, or an individual.

14 Sec. 12. As used in this chapter, "producer" means a person  
 15 who:

16 (1) produces or causes to be produced in any one (1)  
 17 marketing period within the previous two (2) marketing  
 18 periods an agricultural commodity in quantity beyond the  
 19 producer's own family use and having a minimum value at  
 20 first point of sale as determined by the board for that  
 21 agricultural commodity; and

22 (2) is able, during the marketing period, to transfer to a  
 23 handler or an association a merchantable title to the  
 24 agricultural commodity or provide management, labor,  
 25 machinery, facilities, or any other production input, with the  
 26 assumption of risk, for the production of the agricultural  
 27 commodity under a written or oral contract.

28 Sec. 13. (a) The agricultural marketing and bargaining board is  
 29 established within the office of the commissioner of agriculture.

30 (b) The board shall administer this chapter.

31 (c) The board consists of five (5) individuals appointed by the  
 32 governor, not more than three (3) of whom may be of the same  
 33 political party.

34 (d) At least two (2) members of the board must derive a  
 35 substantial part of their livelihood from agricultural enterprises.

36 (e) One (1) member of the board must be a lay person who is not  
 37 a producer, handler, or a member of an association.

38 (f) The governor shall designate a member of the board to serve  
 39 as chairperson of the board.

40 (g) The governor shall appoint a member of the board to serve  
 41 for a term of four (4) years. An individual appointed to fill a  
 42 vacancy caused by other than expiration of the term shall be



C  
O  
P  
Y

1 appointed only for the unexpired term of the member of the board  
2 whom the individual succeeds.

3 (h) A member of the board may be removed by the governor  
4 upon notice and public hearing, for neglect of duty, for corrupt  
5 conduct in office, or for any other misfeasance or malfeasance but  
6 not for any other cause.

7 (i) A vacancy on the board does not impair the right of the  
8 remaining members to exercise the powers of the board.

9 (j) Three (3) members of the board constitute a quorum.

10 Sec. 14. Each member of the commission who is neither a state  
11 employee nor otherwise being compensated for service as a  
12 member of the commission is entitled to the minimum salary per  
13 diem provided by IC 4-10-11-2.1(b). The member is also entitled to  
14 reimbursement for traveling expenses and other expenses actually  
15 incurred in connection with the member's duties, as provided in the  
16 state travel policies and procedures established by the Indiana  
17 department of administration and approved by the budget agency.

18 Sec. 15. The office of the commissioner of agriculture shall  
19 provide the necessary staff and administrative support for the  
20 commission.

21 Sec. 16. The office of the commissioner of agriculture may adopt  
22 rules under IC 4-22-2 to implement this chapter.

23 Sec. 17. (a) Producers of agricultural commodities are free to  
24 join together voluntarily in associations as authorized by law  
25 without interference by handlers.

26 (b) A handler shall not engage nor permit an employee or agent  
27 to engage in the following unfair practices:

28 (1) To coerce a producer in the exercise of the producer's  
29 right to join and belong to or to refrain from joining or  
30 belonging to an association or to refuse to deal with a  
31 producer because of the exercise of the producer's right to  
32 join and belong to an association.

33 (2) To discriminate against a producer with respect to price,  
34 quantity, quality, or other terms of purchase, acquisition, or  
35 other handling of agricultural products because of the  
36 producer's membership in or contract with an association.

37 (3) To coerce or intimidate a producer to breach, cancel, or  
38 terminate a membership agreement or marketing contract  
39 with an association or a contract with a handler.

40 (4) To pay or loan money, give anything of value, or offer any  
41 other inducement or reward to a producer for refusing or  
42 ceasing to belong to an association.



C  
o  
p  
y

(5) To make or circulate unsubstantiated reports about the finances, management, or activities of associations or producers.

(6) To conspire, combine, agree, or arrange with any other person to do or aid or abet in any practice that is in violation of this chapter.

(7) To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler before the accreditation of the association.

(8) To negotiate with a producer included in the bargaining unit after an association is accredited.

(c) An association shall not engage nor permit an employee or agent to engage in the following unfair practices:

(1) To enter into a contract which discriminates against a producer represented by an accredited association whether or not the producer is a member producer.

(2) To act in a manner contrary to the bylaws of the association.

(3) To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing before the accreditation of the association.

(4) To coerce or intimidate a handler to breach, cancel, or terminate a membership agreement or marketing contract with an association or a contract with a producer.

(5) To make or circulate unsubstantiated reports about the finances, management, or activities of other associations or handlers.

(6) To conspire, combine, agree, or arrange with any other person to do or aid or abet in any practice that violates this chapter.

Sec. 18 (a) For the purpose of enforcing this chapter, the board may receive sworn complaints with respect to violations or threatened violations.

(b) The board may make all necessary investigations, examinations, or inspections of any violation or threatened violation specified in the sworn complaint filed with the board.

(c) If after investigation, the board considers that there is reasonable cause to believe that a person charged has committed a practice that violates this chapter, the board shall issue and cause

C  
O  
P  
Y



1 to be served a complaint upon the person. The complaint summons  
 2 the person to a public hearing before the board, a member of the  
 3 board, or a hearing officer.

4 (d) At a hearing under subsection (c), if, upon a preponderance  
 5 of the evidence, the board, member of the board, or hearing officer,  
 6 determines that the person complained of has:

7 (1) committed a practice that violates this chapter, the board,  
 8 member of the board, or hearing officer shall state its findings  
 9 of fact and shall issue and serve on the person an order  
 10 requiring the person to cease the violation and shall order  
 11 further affirmative action to accomplish the policies of this  
 12 chapter; or

13 (2) not committed a practice that violates this chapter, the  
 14 board, member of the board, or hearing officer shall make its  
 15 findings of fact and issue an order dismissing the complaint.

16 (e) Until the record in a case has been filed in a circuit court, as  
 17 provided for in this chapter, the board at any time upon reasonable  
 18 notice and in a manner the board considers proper, may modify or  
 19 set aside, in whole or in part, any finding or order made or issued  
 20 by the board.

21 Sec. 19. (a) The board may petition any circuit court for the  
 22 enforcement of its orders and for appropriate temporary relief or  
 23 restraining order and shall file in the court the record in the  
 24 proceedings.

25 (b) An objection that has not been presented at the hearing that  
 26 was conducted may not be considered by the court, unless the  
 27 failure or neglect to consider the objection is excused because of  
 28 extraordinary circumstances.

29 (c) The findings of the board for questions of fact supported by  
 30 substantial evidence on the record considered as a whole is  
 31 conclusive.

32 (d) If either party applies to the court for leave to introduce  
 33 additional evidence and shows to the satisfaction of the court that  
 34 the additional evidence is material and that there were reasonable  
 35 grounds for the failure to introduce the evidence in the earlier  
 36 hearing, the court may order additional evidence to be taken  
 37 before the board, a member of the board, or hearing officer and to  
 38 be made a part of the record.

39 (e) The board may modify its findings of the facts, or make new  
 40 findings, by reason of additional evidence introduced under  
 41 subsection (c). If the board modifies its findings of fact, the board  
 42 shall file:



C  
O  
P  
Y

- (1) the modified or new findings, provided that the findings for questions of fact are supported by substantial evidence on the record and considered as a whole conclusive; and  
 (2) its recommendations, if any, for the modification or setting aside of its original order.

(f) Upon the filing of the record with the court, the jurisdiction of the court is exclusive.

Sec. 20. (a) A person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of an order in the court of appeals, by filing in the court a written petition requesting that the order of the board be modified or set aside.

(b) The clerk of the circuit court shall transmit a copy of the petition to the board and the aggrieved party shall file in the court the record in the proceeding certified by the board.

(c) Upon the filing of the petition, the court shall proceed in the same manner as in the case of an application by the board under this section and has the same jurisdiction to:

- (1) grant temporary relief or a restraining order;
- (2) make and enter a decree:
  - (A) enforcing;
  - (B) modifying; or
  - (C) enforcing as modified; or
- (3) set aside in whole or in part the order of the board or the findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

Sec. 21. The commencement of proceedings under this chapter does not stay enforcement of the board's decision but the board or the reviewing court may order a stay upon terms the court considers proper.

Sec. 22. (a) The board shall determine whether a proposed bargaining unit is appropriate.

(b) This determination is made upon the petition of an association representing not less than ten percent (10%) of the producers of the commodity eligible for membership in the proposed bargaining unit as defined by the association.

(c) An association with an overlapping definition of "bargaining unit" may, upon the presentation of a petition by not less than ten percent (10%) of the producers eligible for membership in the overlapping bargaining unit, contest the proposed bargaining unit. The board shall hold a public hearing in accordance to resolve the

C  
O  
P  
Y





dispute.

(d) In making its determination, the board shall define as appropriate the largest bargaining unit in terms of the quantity of the agricultural commodity produced, the definition of the agricultural commodity, geographic area covered, and number of producers included as is consistent with the following criteria:

(1) The community of interest of the producers included in the association.

(2) The potential serious conflicts of interests among members of the proposed unit.

(3) The effect of exclusions on the capacity of the association to effectively bargain for the bargaining unit as defined.

(4) The kinds, types, and subtypes of products to be classed together as agricultural commodity for which the bargaining unit is proposed.

(5) Whether the producers eligible for membership in the proposed bargaining unit meet the definition of "producer" for the agricultural commodity involved.

(6) The wishes of the producers.

(7) The pattern of past marketing of the commodity.

Sec. 23. (a) An association shall be accredited upon determination by the board that the association meets all of the following:

(1) The association meets the requirements of the Capper-Volstead Act, 7 U.S.C. 291 through 7 U.S.C. 292.

(2) The association has submitted a copy of its bylaws that provide that:

(A) each member of the association has one (1) vote in all votes of the membership of the association;

(B) officers or directors must be elected by a majority of the members voting or by delegates representing a majority of the membership; and

(C) all elections shall be by secret ballot.

(3) The association has marketing and bargaining contracts for the current or next marketing period with more than fifty percent (50%) of the producers of an agricultural commodity who are in the bargaining unit and these contracts cover more than fifty percent (50%) of the quantity of that commodity produced by producers in the bargaining unit.

(b) The board may determine the quantity produced by the bargaining unit using information on production in prior marketing periods, current market information, and projections on



1 production during the current market periods. The board shall  
 2 exclude from that quantity any quantity of the agricultural  
 3 commodity contracted by producers with producer owned and  
 4 controlled processing cooperatives and any quantity produced by  
 5 handlers.

6 (c) An association whose main purpose is bargaining but that  
 7 processes a surplus into a form that is not the subject of bargaining  
 8 is not a processing cooperative.

9 (d) The contracts with members must:

10 (1) specify the agricultural commodity;

11 (2) specify that the members have appointed the association  
 12 as their exclusive agent in negotiations with handlers for  
 13 prices and other terms of trade with respect to the sale and  
 14 marketing of the agricultural commodity; and

15 (3) obligate the members to dispose of their production or  
 16 holdings of the agricultural commodity through or at the  
 17 direction of the association.

18 Sec. 24. (a) An association must establish and authorize a  
 19 marketing and bargaining committee to negotiate with handlers  
 20 for the agricultural commodity.

21 (b) The marketing and bargaining committee must be  
 22 comprised of members elected by the members in a secret ballot  
 23 election.

24 (c) The production of the agricultural commodity must  
 25 comprise a significant part of the total farming operation of each  
 26 committee member.

27 (d) Members who have any quantity of the commodity  
 28 contracted with a producer owned and controlled processing  
 29 cooperative are not eligible to serve on a marketing and bargaining  
 30 committee for that commodity.

31 Sec. 25. (a) An association desiring accreditation must file with  
 32 the board a written request for accreditation in the form required  
 33 by the board.

34 (b) The request must contain properly certified evidence that  
 35 the association meets the standards for accreditation and must be  
 36 accompanied by a report of:

37 (1) the names and addresses of members;

38 (2) the name of each handler to whom the member delivered  
 39 or contracted to deliver the agricultural commodity during  
 40 the previous two (2) marketing periods; and

41 (3) the quantity of each agricultural commodity delivered  
 42 under subdivision (2).



C  
o  
p  
y

1 (c) A fee to cover the board's costs in processing the request  
2 must be established by the rules of the board and paid by the  
3 association when the request is filed.

4 Sec. 26. (a) The board may require all handlers of an  
5 agricultural commodity produced in the bargaining unit area as  
6 individuals or through their trade association to file with the board  
7 not later than thirty (30) days after a request for accreditation, a  
8 certified report showing the correct names and addresses of all  
9 producers of the agricultural commodity who have delivered the  
10 agricultural commodity to the handler during the two (2)  
11 marketing periods before the filing of the report and the quantities  
12 of the agricultural commodity received by the handler from each  
13 named producer during the periods.

14 (b) The information contained in the individual reports of a  
15 handler filed with the board may not be made public by the board  
16 nor available to a person for private use.

17 Sec. 27. (a) Not later than sixty (60) days after the date an  
18 association files a request for accreditation, the board shall  
19 determine whether the association may be accredited.

20 (b) If the board determines that insufficient evidence was filed  
21 by the association, the board may permit the association to file an  
22 amended request for accreditation not later than thirty (30) days  
23 after the date of determination.

24 (c) Not later than thirty (30) days after the board's preliminary  
25 finding that the association is to be accredited, the board shall hold  
26 a public hearing to obtain further evidence relevant to  
27 confirmation that the association is to be accredited.

28 (d) Producers of record involved in the bargaining unit must be  
29 notified of the hearing by mail and publication in a newspaper of  
30 general circulation in the bargaining unit area at least ten (10) days  
31 before the date of the hearing.

32 Sec. 28. The board shall issue and publish its determination not  
33 later than thirty (30) days after the close of the hearing.

34 Sec. 29. (a) If the determination of the board is to accredit the  
35 association, the board shall include a preliminary declaration of  
36 accreditation in its determination. The preliminary declaration of  
37 accreditation must clearly state that the association represents all  
38 producers, members and nonmembers alike, who are in the  
39 bargaining unit and acts as the exclusive sales agents for the  
40 bargaining unit in negotiations with handlers.

41 (b) A producer covered in a declaration of accreditation may  
42 join the association and have full membership rights in the

C  
o  
p  
y



1 association.

2 (c) Handlers shall deduct marketing service fees from the  
3 proceeds to be paid to producers for the agricultural commodity in  
4 the amount as determined by the association and forward the  
5 service fees promptly to the association.

6 (d) Marketing service fees deducted by handlers must be within  
7 guidelines determined by the board and are subject to review by  
8 the board upon petition by fifteen percent (15%) of the affected  
9 producers.

10 Sec. 30. (a) The accreditation of the association by the board is  
11 effective thirty (30) days after the publication of the preliminary  
12 declaration of accreditation.

13 (b) During the thirty (30) day period the board shall delay the  
14 accreditation of the association if the board receives a petition  
15 signed by at least one-third (1/3) of the producers in the bargaining  
16 unit who produce at least one-third (1/3) of the production of the  
17 agricultural commodity produced by the bargaining unit, not  
18 including the quantities:

19 (1) contracted with processing cooperatives; and

20 (2) produced by handlers who requested that the association  
21 should not be accredited.

22 (c) The board shall determine by a mail referendum of  
23 bargaining unit producers not later than thirty (30) days after  
24 receiving the petition if producers assent to the accreditation of the  
25 association.

26 (d) Producers in the bargaining unit assent to accreditation if  
27 more than fifty percent (50%) of the producers in the bargaining  
28 unit who produce more than fifty percent (50%) of the volume of  
29 the affected commodity assent to representation by the association.

30 (e) All affected producers, handlers, and other interested parties  
31 must be notified of the outcome of the referendum not later than  
32 ten (10) days after the completion of the referendum.

33 (f) Accreditation is effective immediately if producers assent.  
34 Accreditation shall be denied without the required assent of the  
35 producers.

36 (g) An association which is denied accreditation may not file  
37 another request for accreditation for one (1) year.

38 Sec. 31. (a) An accredited association must file an annual report  
39 with the board in the form and manner required by the board.

40 (b) The board shall review each annual report to determine if  
41 the association that filed the report continues to meet the  
42 requirements of this chapter.



C  
o  
p  
y

1       Sec. 32. (a) To revoke the accreditation of an accredited  
2 association the board shall employ a procedure similar to the  
3 accreditation procedure set forth in this chapter.

4       (b) Revocation of accreditation shall be considered by the board  
5 upon any of the following conditions:

6           (1) Receipt of a request from an accredited association for its  
7 own disaccreditation.

8           (2) Receipt of a petition requesting that the accredited  
9 association be disaccredited and bearing the signatures of at  
10 least one-third (1/3) of the producers in the bargaining unit  
11 who produce at least one-third (1/3) of the bargaining unit  
12 production of the agricultural commodity exclusive of  
13 quantities contracted with processing cooperatives and  
14 produced by handlers.

15       (c) A request for revocation of accreditation may not be  
16 accepted by the board during a period that begins with the first  
17 day of marketing period and ends sixty (60) days after the end of  
18 the marketing period.

19       Sec. 33. (a) An accredited association is the exclusive  
20 representative of all producers in the bargaining unit for the  
21 purpose of bargaining with all handlers that purchase the  
22 agricultural commodity produced in the bargaining unit.

23       (b) Negotiations may include all terms relative to trading  
24 between handlers and producers of the agricultural commodity,  
25 such as:

26           (1) prices and related terms of sale;

27           (2) quality specifications;

28           (3) quantity to be marketed; and

29           (4) transactions involving products and services utilized by  
30 one (1) party and provided to the other party.

31       (c) The parties shall notify the board of the commencement of  
32 negotiations.

33       Sec. 34. (a) Upon the request of an accredited association or  
34 upon the request of a handler, the board shall provide for the  
35 mediation of an issue or issues in dispute.

36       (b) The board shall take such steps to create a voluntary,  
37 amicable, and expeditious adjustment and settlement of the  
38 differences and issues between the association and the handler  
39 which could disrupt the normal sale and purchase of the  
40 agricultural commodity between producers and the handler.

41       (c) The board shall do the following:

42           (1) Arrange for, hold, adjourn, or reconvene a conference or



1 conferences between the disputing parties and one (1) or more  
2 of their representatives.

3 (2) Invite the disputing parties and their representatives to  
4 attend the conference and submit, orally or in writing, their  
5 differences.

6 (3) Discuss the differences with the disputing parties or their  
7 representatives.

8 (4) Assist in negotiating and drafting agreements for the  
9 adjustment and settlement of differences.

10 (d) In implementing its duties under this section, the board may  
11 designate one (1) of its members or retain a competent individual  
12 to act in its behalf and may delegate to the designee its duties. A  
13 competent individual retained to mediate a dispute must have  
14 experience in mediation and in agricultural marketing. When an  
15 individual is retained the board shall establish the individual's fee  
16 in advance.

17 (e) The designee or competent individual described in subsection  
18 (d), has all the powers conferred upon the board in connection with  
19 the discharge of the duties delegated.

20 Sec. 35. (a) At least thirty (30) days before the first day of the  
21 marketing period, if an agreement on the issues in dispute between  
22 the accredited association and the handler has not been reached,  
23 the:

24 (1) handler may elect not to purchase, directly or indirectly,  
25 any quantity of the agricultural commodity produced in the  
26 bargaining unit during the marketing period; or

27 (2) affected producers may elect, as represented by the  
28 association, not to sell, directly or indirectly, any quantity of  
29 the agricultural commodity to the handler during the  
30 marketing period.

31 If either party makes an election, the other party is not under an  
32 obligation to continue bargaining with the party electing during  
33 that marketing period.

34 (b) If the election provided for in subsection (a) is not exercised  
35 by the association or the handler involved in negotiations, and if  
36 the issues in dispute are not agreed upon through good faith  
37 bargaining by the first day of the marketing period for the  
38 agricultural commodity, the:

39 (1) parties are considered to have consented to the settlement  
40 of all issues in dispute by arbitration;

41 (2) association agrees that producers shall deliver the  
42 agricultural commodity to the handler or initiate the

C  
o  
p  
y



1 production of the agricultural commodity for future delivery  
2 to the handler; and

3 (3) handler shall accept delivery of the agricultural  
4 commodity or shall commit for the future delivery of the  
5 agricultural commodity.

6 Sec. 36. (a) When the quantity of the agricultural commodity to  
7 be marketed is in dispute, the handler shall offer to accept for  
8 delivery a reasonable quantity of the agricultural commodity. This  
9 offer must be made in writing to the accredited association at least  
10 seven (7) days before the start of the marketing period. A copy of  
11 this offer must be sent by registered mail to the board.

12 (b) The accredited association may file a claim for relief with the  
13 board if it feels that the offer under subsection (a) is unreasonable.  
14 The board shall determine the issue of reasonableness at a public  
15 hearing.

16 (c) A determination under this section has priority over all other  
17 board matters. The board shall base its determination on:

18 (1) projections on the quantity of the agricultural commodity  
19 to be produced;

20 (2) the relationship between the quantity of the commodity  
21 available and the amount of the quantity accepted by the  
22 handler;

23 (3) the kind, grade, and quality of the commodity available;  
24 and

25 (4) the past practices of the handler in relation to the items in  
26 subdivisions (1), (2) and (3).

27 (d) If, upon the preponderance of the evidence, the board finds  
28 that the quantity is unreasonable, the board shall order the handler  
29 to accept the quantity which the board finds to be reasonable.

30 (e) The finding of the board is final, subject to later modification  
31 by the joint settlement committee.

32 Sec. 37. (a) Not later than fifteen (15) days after the start of the  
33 marketing period for the agricultural commodity, the board shall  
34 establish a joint settlement committee to arbitrate the issues in  
35 dispute.

36 (b) The committee consists of:

37 (1) one (1) committee member selected by the association;

38 (2) one (1) committee member selected by the handler; and

39 (3) one (1) committee member selected by the committee  
40 members in subdivisions (1) and (2).

41 (c) The committee member appointed under subsection (b)(3) is  
42 the chairperson of the committee.



C  
O  
P  
Y

(d) If the committee member appointed under subsection (b)(3) cannot be agreed upon by the association committee member and the handler committee member, the board shall submit a list composed of the names of five (5) persons knowledgeable in the marketing of the agricultural commodity from which the third committee member shall be chosen. The selection shall be made by the association representative and the handler representative each alternately striking one (1) name from the list, until only one (1) name remains. The remaining name is the person who serves as the third committee member and as its chairperson. The order of striking must be determined by chance.

Sec. 38. (a) The chairperson of the joint settlement committee shall call a public hearing not later than fifteen (15) days after the date the chairperson is selected. The joint settlement committee shall give reasonable notice of the time and place of the hearing.

(b) The chairperson shall preside over the hearing and shall take testimony.

(c) Upon application and for good cause and subject to the terms and conditions set forth by the chairperson, a person having a substantial interest in the matter before the joint settlement committee may be granted leave to intervene by the committee.

(d) Any oral or documentary evidence and other relevant information may be received in evidence.

(e) A verbatim record of the proceedings must be made and the chairperson shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the committee.

(f) The expense of the proceedings, including a fee to the chairperson, established in advance by the board shall be borne equally by each of the parties to the dispute and the state.

(g) The hearing conducted by the committee may be adjourned from time to time, but, unless otherwise agreed by the parties, must be concluded not later than thirty (30) days after the date of its commencement.

Sec. 39. (a) The committee may administer oaths, require the attendance of witnesses, and the production of books, papers, contracts, agreements, and documents that are material to a just determination of the issues in dispute, and for such purpose may issue subpoenas.

(b) If a person refuses to obey a subpoena, or refuses to be sworn or to testify, or if a witness, party, or attorney is guilty of





1 contempt at any hearing, the committee may, or the attorney  
 2 general if requested shall, invoke the aid of a circuit court within  
 3 the jurisdiction in which the hearing is being held. The court shall  
 4 issue an appropriate order. Failure to obey the order may be  
 5 punished by the court as contempt.

6 Sec. 40. (a) The committee shall make written findings of fact  
 7 and issue its written award not later than twenty (20) days after the  
 8 conclusion of the hearing.

9 (b) The committee shall mail or otherwise deliver a true copy of  
 10 the written findings of fact and written award to the parties or  
 11 their representatives.

12 (c) The award of the committee shall be limited to the last offer  
 13 of the association or the last offer of the handler which more nearly  
 14 complies with the following criteria:

15 (1) Prices or projected prices for the agricultural commodity  
 16 paid by competing handlers in the market area or competing  
 17 market areas.

18 (2) Amount of the commodity produced or projections of  
 19 production in the production area or competing marketing  
 20 areas.

21 (3) Relationship between the quantity produced and the  
 22 quantity handled by the handler.

23 (4) The producers cost of production including the cost that  
 24 would be involved in paying farm labor a fair wage rate.

25 (5) The average consumer prices for goods and services.

26 (6) The impact of the award on the competitive position of the  
 27 handler in the marketing area or competing areas.

28 (7) The impact of the award on the competitive position of the  
 29 agricultural commodity in relationship to competing  
 30 commodities.

31 (8) A fair return on investment.

32 (9) Kind, quality, or grade of the commodity involved.

33 (10) Stipulation of the parties.

34 (11) Other factors which are normally or traditionally taken  
 35 into consideration in determining prices, quality, quantity,  
 36 and the costs of other services involved.

37 Sec. 41. A majority decision of the committee, if supported by  
 38 competent, material, and substantial evidence on the whole record,  
 39 is final and binding upon the parties and may be enforced at the  
 40 instance of either party or of the committee in a circuit court.

41 Sec. 42. Awards of the committee are reviewable by the circuit  
 42 court, but only for reasons that the:



- (1) committee was without or exceeded its jurisdiction;
- (2) award is unsupported by competent, material, and substantial evidence on the whole record; or
- (3) award was procured by fraud, collusion, or other similar and unlawful means.

An award of the committee is not automatically stayed during a review by the circuit court.

Sec. 43. Not later than thirty (30) days after an accredited association negotiates a contract with a handler or receives a committee award, the accredited association shall send a copy of the contract or award to the board by registered mail.

Sec. 44. (a) At all reasonable times the board has access to and may copy evidence relating to a person or action under investigation by the board in connection with a failure or refusal to bargain or for engaging in unfair practices.

(b) In case of refusal to obey a subpoena issued to a person, the circuit court, upon application by the board, has jurisdiction to order the person to appear before the board to produce evidence or to give testimony on the matter under investigation. Failure to obey the order of the circuit court may be punished by the court as a contempt.

(c) Complaints, orders, and other processes and papers of the board may be served personally, by registered mail, or by leaving a copy at the principal office or place of business of the person required to be served. The verified return of service is proof of the service.

(d) Witnesses summoned before the board must be paid the same fee and mileage allowance that are paid witnesses in circuit court. Witnesses whose depositions are taken and the person taking the depositions are entitled to the same fees as are paid for the same services in circuit court.

(e) All processes of a court where an application or petition may be made under this chapter may be served at any place in Indiana where the person or persons required to be served reside or may be found.

Sec. 45. The activities of accredited associations and handlers in bargaining with respect to the price and other terms of sale of the agricultural commodities produced by the members of such accredited associations do not violate any provisions of IC 24-1.

Sec. 46. A party who willfully disobeys a court order under this chapter or willfully encourages or offers resistance to an order is in contempt. The punishment for each day the contempt continues



C  
O  
P  
Y

1 may be a fine fixed by the court in an amount not to exceed five  
2 hundred dollars (\$500) per day.

3 SECTION 2. [EFFECTIVE JULY 1, 2001] (a) Notwithstanding  
4 IC 15-4-13, as added by this act, the initial members of the  
5 agricultural marketing and bargaining board shall be composed as  
6 follows:

7 (1) two (2) members of the board appointed for a term of one

8 (1) year;

9 (2) one (1) member of the board appointed for a term of two

10 (2) years;

11 (2) one (1) member of the board appointed for a term of three

12 (3) years; and

13 (4) one (1) member of the board appointed for a term of four

14 (4) years.

15 The governor shall indicate the length of term when making the  
16 appointment of the initial board.

17 (b) The governor shall make the appointments under this  
18 SECTION not later than August 1, 2001.

C  
o  
p  
y



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1543, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 13, delete "all perishable fruits and vegetables" and insert "**livestock or grain produced primarily for sale, consumption, propagation, or other use by human beings or animals,**".

Page 4, line 3, before "hearing" insert "**public**".

Page 6, line 1, before "hearing" insert "**public**".

Page 15, line 12, before "hearing" insert "**public**".

and when so amended that said bill do pass.

(Reference is to HB 1543 as introduced.)

LYTLE, Chair

Committee Vote: yeas 11, nays 0.

C  
o  
p  
y

